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Joint Councils Deadline 3 Submission

Gloucestershire County Council, Cheltenham
Borough Council, Tewkesbury Borough Council

30 July 2024

M5 JUNCTION 10 IMPROVEMENTS SCHEME DCO

**Joint Councils Response to the Examining
Authority's First Written Questions**

Notice

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1. Introduction

- 1.1.1 Gloucestershire County Council (GCC), Cheltenham Borough Council (CBC) and Tewkesbury Borough Council (TBC) (together 'the Joint Councils') are the three host authorities for the GCC Major Projects Team ('the Applicant') M5 Junction 10 Improvements Scheme Development Consent Order (DCO) ('the Scheme').
- 1.1.1. This document is the Joint Councils Response to the Examining Authority's (ExA's) First Written Questions (ExQ1), submitted at Deadline 3 of the Examination.



2. The Joint Councils Response to ExQ1

Table 2-1 – The Joint Councils Response to ExQ1

ExA ExQ1 ref	Question to:	Question	Joint Councils Response at Deadline 3
1. General and Cross-topic Questions			
Q1.0.2	The Applicant, Joint Councils and National Highways (ii) only	<p>Mitigation</p> <p>The First Iteration Environmental Management Plan – as referenced in the DCO appears to be written such that subsequent approvals are not required by the relevant planning authority.</p> <p>(i) Is our understanding of the approach, correct?</p> <p>(ii) Do the Councils, or National Highways agree that (assuming this is confirmed) this is an appropriate mechanism for the Applicant to be undertaking and if not what alternative would you wish to see?</p>	<p>(i) No, this understanding is incorrect. It is anticipated that the Second Iteration Environmental Management Plan (EMP) (and associated documents) would be submitted for approval.</p> <p>(ii) In providing comments on the Environmental Statement (ES), Annex B, Environmental Management Plan, the Joint Councils (Air Quality) noted that a Second Iteration of the EMP will be produced by the Principal Contractor and will include at Annex B.4 an Air Quality Management Plan. It is presumed this will detail mitigation measures to be implemented for the control of construction dust, as described in Section 5.8 of the ES and the Register of Environmental Actions and Commitments (REAC) and made specific for the intended construction methods and activities (see ES para 5.8.3).</p> <p>The Joint Councils' comment also indicated that we would welcome submission of the Second Iteration EMP to the Joint Councils for comment and approval prior to commencement of works.</p> <p>Furthermore, paragraph 3.3.1 of the EMP says:</p> <p><i>Detailed design will inform the second iteration Management Plans which will be contained in the EMP (2nd iteration) and it is those second iteration Management Plans which will be the relevant plans for mitigating the impacts of construction. As the second iteration Management Plans will fall within the EMP (2nd Iteration) then, pursuant to Requirement 3 of the DCO, they will be prepared in consultation with the relevant planning authority and National Highways and submitted to and approved by the county planning authority prior to commencement of development of the relevant part of the authorised development.</i></p> <p>We therefore expect the second iteration EMP (and associated annexes) to be submitted to the Joint Councils prior to commencement of works.</p>
1.1 Environmental Statement (General)			
Q1.1.4	The Applicant, Joint Councils	<p>Cumulative Effects Assessment</p> <p>Paragraph 15.6.11 of the CEA [APP-074] states that the safeguarded land to the west of Cheltenham, immediately adjoining the West Cheltenham Development Area, which is identified in the JCS, is scoped out of the CEA, on the basis that the policy cites it as potentially meeting needs beyond the JCS period and GCC has not advised of any current developer interest that would potentially accelerate delivery here.</p> <p>(i) Can the Joint Councils and the Applicant provide an update on the agreement for this site to be scoped out of the cumulative effects assessment, or if there has been any update on potential future development on this safeguarded site.</p> <p>(ii) It is noted that the safeguarded land at north-west Cheltenham is included within the Transport Assessment (AS-029). Can the Applicant outline why this site has been included in the TA but not within the ES, and consequently, how the ES can be considered</p>	<p>(i) The approved Local Development Scheme sets the programme for the preparation of the Cheltenham, Gloucester and Tewkesbury Strategic and Local Plan (SLP). Regulation 18 consultation took place end 2023/beginning of 2024 and a further Regulation 18 consultation is scheduled Spring 2025. This site will be assessed alongside all submitted sites. Should the site be allocated then there could be potential that some units may be realised before the end of 2031, however we cannot determine this at this stage as this will be subject to the outcomes of the SLP.</p> <p>Paragraph 15.3.14 in CEA ES Chapter (APP-074) sets out the RFFP long-list criteria that has to be met in order for a project to be screened for inclusion within the CEA. Criterion 6 is relevant and states:</p> <p><i>'Development Plan projects such as the site allocations, safeguarded sites and transport initiatives scheduled for development within the Joint Core Strategy (JCS) (therefore proposed for implementation by 2031, which pre-dates the operational future baseline for the Scheme) that are within 5 km of the Order limits (with the flexibility to consider additional projects if consultation with TBC and CBC identifies a need). The inclusion of such projects is subject to desk-based validation of sufficient evidence available relating to the projects to allow a meaningful cumulative effects assessment for the Scheme, together with consideration of whether such projects are dependent upon the Scheme for their progression and/or have the potential to affect the traffic flows on links that are relevant to the transport, noise and vibration and air quality assessments'</i></p> <p>The safeguarded land to the west of Cheltenham, immediately adjoining the West Cheltenham Development Area is scheduled for development to come forward after the plan period – post 2031. That places it outside the qualifying criteria for inclusion in the CEA as an RFFP. In addition, there is an existing waste treatment site on this land. Due to the location of the waste treatment site on the land and the associated difficulty in bringing the site forward would suggest that it would not be</p>

ExA ExQ1 ref	Question to:	Question	Joint Councils Response at Deadline 3
		<p>as robust where the effects of traffic (For example noise and air quality)</p> <p>(iii) What evidence does the Applicant have that the development of the safeguarded land at north-west Cheltenham may come forward within the time frame that would be material to this proposed development and should be within the CEA and the TA?</p>	<p>within a timeframe for consideration by the Scheme. The two safeguarded sites (West of Cheltenham and north-west of Cheltenham) are therefore different in that regard.</p> <p>(ii) Safeguarded land at north-west Cheltenham is a different site from the one that point (i) relates to. This area of safeguarded land is included within the scope of the ES, as an RFFP that has been considered within the CEA in all topic chapters. It is referred to in the ES as 'safeguarded land to the north-west of Cheltenham' and appears within the CEA. The assumptions used in the CEA are set out in the RFFP shortlist at Table 15-3 (p29 of APP-074).</p> <p>Note: The Joint Councils are not required to answer this question, but it also provides context for the answer to Q1.1.5 (i) below so we have included the Applicants response.</p>
Q1.1.5	The Applicant, Joint Councils	<p>Cumulative Effects Assessment</p> <p>(i) In light of the previous question, please provide clarity on the apparent tension between the exclusion of this site (north-west Cheltenham safeguarded land) from the CEA, but the inclusion of an assumed traffic generation within the TA?</p> <p>(ii) Please explain why a different approach is justified and support this with appropriate evidence, precedent or policy as appropriate.</p> <p>(iii) If a consistent approach were to be taken in respect of CEA and the TA such that the safeguarded land was not included, please explain what implications this could have for the Proposed Development, the ES, and the quantity of land to deliver the proposal.</p> <p>(iv) Counter to the above, as the CEA does not include this land can the ExA be confident that the worst-case scenario has been assessed in respect of cumulative environmental effects?</p>	<p>(i) As set out in the Applicant's response to Q1.1.4 (ii) included above the safeguarded land to the north-west of Cheltenham is included within the CEA as well as the TA, therefore there is no further response required in respect to questions (ii) to (iv)</p>
Q1.1.7	The Applicant, Joint Councils	<p>Cumulative Effects Assessment</p> <p>The cumulative effects assessment (CEA) ES Chapter 15 [APP-074] states in paragraph 15.4.2 that consultation took place on the long and short lists in October 2022 and November 2022.</p> <p>(i) Given the time that has elapsed since this point, the Applicant is requested to provide an update on any new planning applications or allocations which have come forwards since then which are of relevance to the CEA.</p> <p>(ii) Can the Applicant and the Joint Councils ensure that the final updated list is agreed and is confirmed as part of the SoCG.</p>	<p>(ii) The Applicant has circulated their draft response to Q1.1.7 to the Joint Councils prior to the submission at Deadline 3. As stated in paragraph 15.3.15 of the ES CEA Chapter [APP-074], the RFFP list was last updated in June 2023. It is of the Joint Councils' understanding that the Applicant proposes to prepare a technical note that provides an update on new projects that meet the criteria for RFFPs which have come forward since the last review of the list and assesses their relevance to the Scheme and the CEA. The Joint Councils have no further comment on this proposed approach and welcome the Applicant's intention to include this technical note within the SoCG discussions with the Joint Councils. The Joint Councils look forward to reviewing this technical note at Deadline 4 and are fully committed to ensuring that the final updated cumulative schemes list is accurately agreed upon and any comments from the Joint Councils will be incorporated into the SoCG. The Joint Councils will work closely with the Applicant to ensure that all necessary details are finalised and documented appropriately.</p>
1.2 Need			
Q1.2.1	The Applicant, Joint Councils, National Highways	<p>Safeguarded Land</p> <p>(i) It would appear to be accepted that the safeguarded land is not currently allocated but is likely to be considered in future iterations of local plans. Considering the need case, on what policy basis should the safeguarded land identified within Policy</p>	<p>(i) The policy status is that the principle of development and removal of the site from the green belt is supported. It does not have the status of a strategic allocation, but it does have the status that the site is supported as a potential future allocation to meet development needs.</p> <p>The Applicant has circulated their draft response to Q1.2.1 to the Joint Councils prior to the submission at Deadline 3 which the Joint Councils are in agreement with, the text is provided below:</p>

ExA ExQ1 ref	Question to:	Question	Joint Councils Response at Deadline 3
		<p>SD5 of the JCS form part of the justification for highway improvements now?</p> <p>(ii) Would it be more appropriate to say, that the safeguarded land does not currently generate a 'need' as it has no policy status?</p>	<p>Whilst the Strategic and Local Plan is in its early stages of development the Issues and Options Consultation (January to March 2024) would suggest that of the six Scenarios proposed only Scenario 2 (Urban Extensions) would appear to meet the housing and employment needs identified. This would include safeguarded land from the JCS as a consideration for the future development strategy and its potential allocation and highlights the importance of the safeguarded land or equivalent in policy considerations beyond the current plan period of the JCS.</p> <p>As stated in the response to Q1.1.4 the safeguarded land at north-west Cheltenham relates to land for which a housebuilder has declared an interest. The manner of engagement by the developer has suggested that the developer will be seeking to accelerate the timeframe.</p> <p>As outlined in the Applicant's response to RR-005 (REP1-048), it should be noted that the safeguarded land was included in the Scheme's assessment and design development as the most reasonable proxy to ensure that the Scheme was able to future proof the road networks' resilience. This is in the context of the Scheme's 2042 design year looking beyond the plan term of the JCS (2031) and that the nature of its safeguarding through the JCS suggesting that it was the most likely site to come forward in this time period. Whilst the Applicant recognises the uncertainty surrounding the Safeguarded land being brought forward its inclusion within the Scheme assessment would have no bearing on the Scheme design other than to demonstrate that the design that unlocks Site Allocations A4 and A7 is also capable of accommodating the traffic associated with the Safeguarded land or any other equivalent development sites that come forward in relative proximity to the junction.</p> <p>(ii) JCS policy SD5 removed the safeguarded areas: west of Cheltenham and north-west of Cheltenham from the green belt. Whilst the safeguarded sites do not have a policy status of a strategic allocated site, the fact it has been removed from the green belt establishes the principle of development of the safeguarded land. The Scheme provides enough capacity for the additional traffic associated with the safeguarded land as well as A4 and A7. This is on the basis that the Scheme's 2042 design year looks beyond the plan term of the JCS (2031).</p>
Q1.2.3	The Applicant, National Highways and GCC as Local Highway Authority	<p>Associated Development</p> <p>In response to the ISH1 Agenda Item Policy (iv) the Applicant states in [REP1-046] "<i>As to the Link Road, the West Cheltenham site cannot be released without M5 Junction 10 improvement and therefore there is a close interdependence.</i>"</p> <p>(i) Please set out where the ExA can find the policy or TA evidence that this is the case.</p> <p>(ii) Do National Highways and GCC as Local Highway Authority agree that the West Cheltenham site cannot go ahead without either improvements to the M5 Junction 10 or the link road?</p>	<p>(i) JCS Policy INF1: Transport Network provides the policy evidence for the case by the Applicant for ISH1 Agenda Item Policy (iv). JCS Policy INF1: Transport Network requires the developers to assess the impact of development on the transport network through a transport assessment that demonstrates any impact including cumulative impacts of the prospective development on atmospheric pollution within the zone of influence of the development. JCS Policy INF1: Transport Network requires development proposals to ensure safe and efficient connections for all modes to the transport and particularly the highway network to enable travel choice for residents and commuters, and to design active travel connections in a way that encourages maximum potential use to ensure that credible travel choices are provided by sustainable modes.</p> <p>(ii) GCC as the Local Highway Authority agrees that the West Cheltenham Site cannot go ahead without the identified improvements. The current traffic situation on the A4019 shows morning queuing back to J10, without the proposed development of the West Cheltenham site. This is shown in the modelling of Scenario P within the TA. Any additional development in the absence of the improvement will exacerbate this situation.</p> <p>Furthermore; GCC understands that the National Highways Grampian Condition is currently under review and may result in a raising of their develop limits pending implementation of J10 south slips in connection with anticipated main line queuing at M5 J10 south bound off-slip and M5 J11 south bound off-slip and Elmbridge Court on the A40. However, that is only a very small part of the picture, harm arising from growth on the local road network in the absence of the re-direction of traffic to the south facing slips is much more severe. The County Council as highway authority has commissioned a separate piece of work using their new multi-modal SATURN model. This re-tests the assumptions of a 1700 deadweight on the local road network and will be the basis for testing a congestion, noise, air quality and safety in accordance with INF1 of the JCS. That modelling re-affirms the local road 1700-unit limit.</p>
1.3 Site selection and alternatives			
Q1.3.1	National Highways, GCC as Highway Authority	<p>Alternatives</p> <p>If the modifications to M5 J10 were undertaken as proposed without the associated development proposed in scheme elements 2 and 3, would the SRN and the LRN operate to an appropriate standard?</p>	<p>The LRN would not operate to an appropriate standard. There are currently issues with queuing back along the A4019 in the base scenario, and congestion on other routes into Cheltenham including routes from J11 and along Princess Elizabeth Way. Currently vehicles arriving from the south travelling to the north and west of Cheltenham would route from J11, along the A40 and then travel along Princess Elizabeth Way. Making J10 an all movements junction would allow vehicles to utilise this junction and the A4019 to reach these destinations, which in itself is likely to increase the amount of queuing and delay on the A4019 if scheme elements 2 and 3 are not</p>

ExA ExQ1 ref	Question to:	Question	Joint Councils Response at Deadline 3
		In responding to this can you explain your response with and without the proposed development from the allocations or the safeguarded land?	delivered. The knock-on effect of this is that any delay on the A4019 would result in drivers choosing alternate routes, which would include the established routes via J11, the A40 and Princess Elizabeth Way. Therefore the improvements to J10 in isolation would not resolve these wider local road network concerns. This level of delay experienced on the LRN would occur regardless of with and without the allocations and safeguarded land.
2. Air Quality and Emissions			
Q2.0.1	The Applicant, Joint Councils	<p>Dust Mitigation</p> <p>The Joint Council [RR-039] identifies the need for dust mitigation, are all parties now in agreement or otherwise that the mitigation provided through the EMP and subsequent Air Quality Management Plan would appropriately control dust emissions?</p>	<p>The Joint Councils accept the Applicant's response that dust mitigation measures are detailed in the Register of Environmental Actions and Commitments (REAC) [REP1-030] and the Environmental Management Plan Annex B4 – Air Quality Management Plan (AQMP) [AS-034].</p> <p>Subsequent to the Joint Councils' Relevant Representation [RR-039], issued in March 2024, a number of the original matters have now been addressed via updates to the Environmental Statement or through specialist meetings. This is reflected within the Statement of Common Ground (TR010063 - APP 8.2) [REP1-034] which now supersedes RR-039, and states that all Air Quality matters are now agreed.</p> <p>The Joint Councils have previously indicated that the submission of the Second Iteration EMP to the Joint Councils for comment and approval prior to commencement of works is welcomed.</p> <p>Furthermore, Section B.4.4 of the AQMP (1st iteration) [AS-034] indicates that the Principal Contractor will consult with the environmental health departments of TBC and CBC regarding the management of dust and emissions to air during construction of the Scheme. This is welcomed.</p> <p>The Joint Councils also invited the environmental health officers at CBC and TBC to make a response to Q2.0.1. The following response is received from the environmental health officer at CBC:</p> <p><i>'Document reviewed: Annex B4 - Air Quality Management Plan (TR010063 – APP 9.4)</i></p> <p><i>This document identifies suitable methods for the control of fine particulates during the construction phase of the project from a full range of expected sources.'</i></p> <p>The following response is received from the environmental health practitioner at Worcestershire Regulatory Services on behalf of TBC:</p> <p><i>'The identified measures including possible monitoring of dust during the construction phase which due to the length of the construction phase would be acceptable. Close liaison between the contractor, residents and the district council environmental health services will assist in minimising the impact of dust during the construction phases. TBC would wish for monitoring to be carried out with reporting to interested parties.'</i></p>
Q2.0.3	Joint Councils	<p>Use of Model Corrections</p> <p>Table 5-7 of ES Chapter 5 [AS-012] provides a summary of the annualised and bias adjusted concentrations for 10 locations. Can the local authorities and any other interested parties confirm that they are in agreement or otherwise in relation to the adjustment factors and data locations used?</p>	<p>The Joint Councils had sought clarification from the applicant in relation to the annualisation factor applied to Site D2. The Applicant's response was satisfactory, explaining that only 5 months of data were available at this location vs 6 months of data at the other 9 sites in the survey, hence the different annualisation factor applied to monitoring data at Site D2.</p> <p>Co-location of triplicate tubes for Site D1 at the St George's Street CMS to generate a local adjustment factor of 1.009 (as advised in footnote to Table 5-7) is an appropriate approach to bias adjustment.</p> <p>The Joint Councils have no further comment in this respect.</p> <p>The Joint Councils also invited the environmental health officers at CBC and TBC to make a response to Q2.0.3. The following response is received from the environmental health officer at CBC:</p> <p><i>'The raw figures from analysis of NOx monitoring tubes appears to have been annualised using a factor of 1.03, to reflect that the survey only ran for a 6-month period. The annual bias adjustment figure used by CBC to reflect inaccuracies incurred in handling monitoring tubes for 2019 was 0.99. For the record, the bias adjustment figure is still 0.99 when using data for July – December, only. I am not clear on why this report used a "Local bias adjustment factor 1.009, based on comparison between CBC CMS1 and site D1" as reported under table 5-7. It is important to note that the effect of these differences is approximately 1% and the report very marginally over-estimates monitored pollution levels.'</i></p>

ExA ExQ1 ref	Question to:	Question	Joint Councils Response at Deadline 3
			The following response is received from the environmental health practitioner at Worcestershire Regulatory Services on behalf of TBC: <i>'The location of the additional report generated sites appears reasonable relating to the likely impact of the development.'</i>
Q2.0.5	Joint Councils	<p>Cheltenham Air Quality Management Area</p> <p>Can the Council's confirm that they are confident that the Proposed Development if approved and undertaken would not compromise the ability to manage the AQMA in Cheltenham, or lead to any worsening of effects.</p>	<p>The results presented in Chapter 5 of the ES indicate that although NO₂ concentrations at modelled receptors within the Cheltenham AQMA are expected to still be in exceedance of the annual mean air quality objective with the Scheme, pollutant concentrations are reduced versus the without Scheme scenario. On this basis, it is not anticipated that the Scheme would adversely affect measures to improve air quality within the AQMA, rather the Scheme assists in improving connectivity across the road networks within and around Cheltenham, redistributing traffic and reducing traffic flows on some roads. A revised Air Quality Action Plan for the Cheltenham AQMA is under development.</p> <p>The Joint Councils also invited the environmental health officers at CBC and TBC to make a response to Q2.0.5. The following response is received from the environmental health officer at CBC:</p> <p><i>'The 2020 Cheltenham AQMA was declared due to an exceedance of the Air Quality Standard (AQS) level of NO₂ in a small area around High Street / Poole Way / Swindon Road. More recent monitoring has shown levels of NO₂ slowly declining to below guideline levels in this area, and the AQMA is expected to be revoked in the next 12-18 months, after an extended period of compliance. Modelling of air quality is provided in "Environmental Statement Chapter 5: Air Quality [TR010063 - APP 6.3]. This predicts an exceedance of the AQS objective of 40ug/m³ at 3 locations, including a predicted 2027 NO₂ level of 53.8 µg/m³ at receptor R_59 without the Scheme, and the modelled change of -1.6 µg/m³, producing a 'small' decrease to 52.2 µg/m³. These figures are not supported by recent monitoring of NO₂ levels at this location, carried out by CBC, which produced a 2023 figure of 36.4 ug/m³. This discrepancy is largely explained by the considerable post-covid changes in commuting habits that has produced a consistent reduction in NO₂ levels across the borough. Similarly, receptor R_66 has a 2027 modelled level of 44.0ug/m³, reducing to 43.4ug/m³ with the project. The monitored 2023 level at this location was 28.3ug/m³. Other modelled levels of NO₂ do not exceed the AQS. 2019 Base figure is considerable over-estimate.'</i></p> <p>The following response is received from the environmental health practitioner at Worcestershire Regulatory Services on behalf of TBC: <i>'Not relevant to TBC but interesting observations of the current period. The annual mean at 16N in TBC has reduced by 25.5% 2019-2022 reflecting the above.'</i></p>

3. Biodiversity, Ecology and the Natural Environment

Q3.0.6	The Joint Councils, Gloucestershire Wildlife Trust, Natural England	<p>Landscape Ecology Management Plan (LEMP) 1st Iteration</p> <p>Can the Joint Councils and IPs confirm they are content with the content, including aims and objectives for the proposed habitat creation and subsequent management of these areas?</p>	<p>(i) The Joint Councils are content with the level of detail included in the 1st iteration of the LEMP (TR010063/APP/9.5) [AS-035]. We understand this is an 'outline' LEMP, and that detailed information regarding the specifics of management, maintenance and monitoring will be added to future iterations as explained in the LEMP. The Joint Council's comments on the outline LEMP are summarised below. These have been raised with the Applicant and it is understood the Applicant intends to pass on these comments to the ECI contractor who will be preparing the 2nd iteration of the LEMP. This is detailed in the Statement of Common Ground (REP1-034, matter reference number 19.1).</p> <ol style="list-style-type: none"> 1. The Joint Councils consider the description of objectives, targets, management and monitoring for habitats appropriate. The objectives and targets for each habitat type are largely focussed on Biodiversity Net Gain (BNG) 'condition assessment' categories, which is reflected in the proposed monitoring against those targets set out in the LEMP. However, the Joint Council's consider that objectives for habitat creation are not just to compensate for the loss of habitats to the Scheme, but to mitigate or compensate for landscape impacts and the loss of habitats used by protected species as described by the Applicant in the ES. The Joint Councils would like to see that objectives, targets and subsequent monitoring are updated to include any relevant requirements relating to landscape function (such as screening) and habitat function for species (such as provision of suitable connected habitat for protected and priority species). 2. The Joint Council's welcome that the text for species rich grassland management includes that grassland habitat should be managed appropriately for protected and priority species once established. We would like to see that it is clear in the LEMP that provision for species, including these taller more infrequently cut areas of vegetation, is in line with the Gloucestershire Highways Biodiversity guidance and is required as part of the scheme mitigation/compensation for specific species.
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ExA ExQ1 ref	Question to:	Question	Joint Councils Response at Deadline 3
			<p>3. The Joint Council's welcome the intention to use 'species-rich grassland' seed mixes in areas categorised as 'modified' grassland. It is understood that these modified grassland areas will be more amenity focused and will use topsoil for faster establishment (a difference to the proposed low nutrient species-rich grassland areas) which will affect the diversity of grassland species. However, the use of 'species-rich grassland' seed mix will be more beneficial to biodiversity than traditional 'amenity' grass seed mixes which are dominated by grass species.</p> <p>4. The Joint Councils would like to see that the 2nd Iteration of the LEMP ensures that the objectives and targets and management for 'bat hop overs' are set out separately as these may differ from other tree planting.</p> <p>5. To avoid any misinterpretation, the Joint Councils would like the text in the next iteration of the LEMP to clearly state that, where target conditions for habitat are described as 'poor', this is in relation to BNG condition assessments.</p>
3.1 Habitats Regulations Assessment			
Q3.1.5	Joint Councils, Natural England	<p>Stage 1 screening – Severn Estuary sites</p> <p>The relevant representation provided by the joint councils indicates that they wish to raise matters relating to the potential water quality impact to the Severn Estuary and a robust justification for it being scoped out. However, it is not clear if the Joint Councils consider that there are any concerns over the assessment of the Severn Estuary SPA / RAMSAR / SAC in the HRA Screening [APP-099] or HRA SIAA [APP-100] reports.</p> <p>(i) The Joint Councils are requested to provide their position on the HRA.</p> <p>(ii) Natural England are also invited to comment on these matters.</p>	(i) Water quality concerns around the Severn Estuary have now been resolved and therefore have no implications on the HRA.
5. Compulsory Acquisition, Temporary Possession and Other Land or Rights Considerations			
Q5.0.12	The Applicant (i, ii, iii), The Joint Councils (ii only), Persimmon Homes, Bloor Homes, St Modwen and Midlands Land Portfolio Ltd (iii only)	<p>Funding</p> <p>Para 3.2.5 of the Funding Statement [APP-036] GCC is to confirm their approach to the application of JCS policy INF7 following the Cabinet meeting in December 2023.</p> <p>(i) What is latest position?</p> <p>(ii) Is this position/approach agreed with the other Councils?</p> <p>(iii) Is this approach agreed with the Interested Parties who are the prospective developers of the allocated sites?</p>	<p>(ii) The Applicant has circulated their draft response to Q5.0.12 to the Joint Councils prior to the submission at Deadline 3. The Joint Councils received the following text from the Applicant on the latest position of their approach to the application of JCS policy INF7:</p> <p><i>The meeting referred to in December 2023 became a Cabinet Paper entitled Funding Update and was submitted in March 2024. The paper states that an Executive decision is required once the funding approach has been finalised. The resolutions include:</i></p> <ul style="list-style-type: none"> <i>Acknowledge that revisions will be required in the future to the Highways Capital budget in relation to the scheme up to a value of £334.270 million, on the basis of £249.131 million secured HIF funding (added for clarity: for M5 J10, Arle Court and Coombe Hill), £4 million secured GCC funding and notes the remaining gap of £81.139 million, in funding for the M5 J10 improvement scheme and confirms its intention to seek to raise those funds through section 106 contributions from developers.</i> <i>Approve the principle of requesting Section 106 contributions toward the M5 Junction 10 Improvements Scheme from development sites benefiting from the scheme, with such contributions being sought under policy INF7 of the Joint Core Strategy and/or any subsequent policy replacement.</i> <i>Delegate authority to the Executive Director of Economy Environment & Infrastructure in consultation with the Cabinet Member for Environment and Planning and the Chief Finance Officer to negotiate and determine GCC's position with regard to the scope, mechanism and levels of contribution being sought from each development site under policy INF7 of the Joint Core Strategy and/or any subsequent policy replacement.</i> <p>It is of the Joint Councils' understanding that this position/approach is not yet agreed with the other Councils and it is expected to be updated by Autumn 2024. The Joint Councils also understand that the Applicant is working with prospective developers of the allocated sites but the approach is not yet agreed. This is also expected to be updated by Autumn 2024.</p>
Q5.0.13	The Applicant, The Joint Councils, (I and ii) Persimmon Homes,	<p>Funding</p> <p>i) What is the latest position in respect of the GCC Local Developers Guide?</p>	(i) The purpose of the Gloucestershire County Council's (GCC) Local Development Guide is to provide information to local planning authorities, developers, and all stakeholders on the types of infrastructure where Gloucestershire County Council may seek funding to mitigate the impacts of the proposed development; to make it acceptable in planning terms. The

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	Bloor Homes, St Modwen and Midlands Land Portfolio Ltd (ii only)	ii) What status do you consider it currently to have?	<p>existing Local Development Guide was adopted by GCC's Cabinet in March 2021 and can be accessed using this link - https://www.gloucestershire.gov.uk/planning-and-environment/planning-policy/gloucestershire-local-developer-guide-infrastructure-and-services-with-new-development/</p> <p>The Guide is intended to aid, and improve transparency and consistency, in decision-making; and to provide guidelines to inform the preparation of development plans and other planning documents, as well as assisting in the determination of planning applications. The Local Development Guide 2021 was subject to a targeted public consultation. Consequently, whilst it is not a Development Plan Document nor a Supplementary Planning Document, it is a material consideration in the determination of planning applications.</p> <p>(ii) The Local Development Guide needs to be periodically reviewed to ensure it reflects the latest published national and local guidance. The County Council is currently in the process of updating the Local Development Guide and a public consultation on the draft guide is open from Monday 8 July until Sunday 29 September, at 5pm. Subject to any material changes required in response to the representations received through this consultation period, a second consultation may be required to conclude the review process. If a second public consultation is required, this will commence in November 2024 for a period of 4 weeks. The aim is for an updated Local Development Guide to be adopted by Gloucestershire County Council's Cabinet in March 2025. The draft Local Development Guide 2024 can be accessed using this link - https://www.gloucestershire.gov.uk/council-and-democracy/latest-news-for-members-from-council-and-partners/gcc-local-development-guide-ldg-public-consultation/</p>
Q5.0.15	The Applicant, Joint Councils	<p>Funding</p> <p>Can the Applicant and Joint Councils provide the following:</p> <p>(i) On an Ordnance Survey base indicate the current planning application red lines and the extent of the allocations in the JCS;</p> <p>(ii) Support this with a table setting out:</p> <ol style="list-style-type: none"> the type (outline, full, reserved matters) and description of the development; the status of the applications, whether they have been approved, refused or remain undetermined, if undetermined what the current state of play is and a likely time frame for determination, and if approved whether a s106 has been completed and if funding from that is assigned towards the infrastructure improvements included within the DCO and how much this equates to. 	<p>(i) To respond to sub-question (i), plans on an Ordnance Survey base have been produced for each of the JCS allocations. Each plan shows the extent of the relevant JCS allocation, the red line boundaries for the current planning applications associated with the relevant JCS allocation and types of the planning applications. Planning applications shown on the plans are numbered which should be read in conjunction with the two tables submitted for responding to Q5.0.15(ii). The plans are submitted in a separate document titled 'Joint Councils Response to ExQ1 Q5.0.15(i)'. To respond to sub-questions (ii) (a), (b), (c) and (d), two tables have been produced to set out the details of current residential and commercial planning applications associated with the JCS allocations respectively. The following information is included in the tables:</p> <ul style="list-style-type: none"> The types of the planning applications, planning application references and description of development; Number of dwellings (the table on residential planning applications only); The status of the applications; The likely time frame for determination, if the applications are yet to be determined; and Details of any approved S106 and their relevance to the Scheme, if the applications have been approved. <p>(ii) The two tables should be read in conjunction with the plans submitted for responding to Q5.0.15(i). The tables are submitted in two separate documents titled 'Joint Councils Response to ExQ1 Q5.0.15(ii) – Employment Allocation Data' and 'Joint Councils Response to ExQ1 Q5.0.15(ii) – Residential Allocation Data'.</p>
Q5.0.18	The Joint Councils	<p>Funding</p> <p>Can the Joint Councils provide a detailed update on the relationship between the Proposed Development and the Community Infrastructure Levy and whether the Proposed Development forms part of the Infrastructure Funding Statement.</p>	<p>At the end of last year/beginning of this year the SLP councils agreed to set up a <u>Community Infrastructure Joint Committee</u> This joint committee will meet for the first time Autumn 2024.</p> <p>As part of the work to agree the CIL joint committee, the 3 councils (Tewkesbury Borough Council, Cheltenham Borough Council and Gloucester City Council) agreed priorities on an updated infrastructure list, with specific reference to M5 J10. APPENDIX 2 Community Infrastructure Levy Joint Committee Infrastructure List.pdf (tewkesbury.gov.uk) The minutes of the Cheltenham Borough Council meeting state “since the report was published, we have had discussions with the county about the infrastructure list. Members are aware of the financial challenges arising from key infrastructure projects, and the need to give the government confidence that no stone is being left unturned, and also the need to seek contributions from the county – S106 is its preferred route for major highways projects and education, but in reality these will need to be a blend of S106 and CIL, as the CIL pot will not be big enough. An amendment would help clarify this”.</p> <p>To date no strategic CIL monies have been allocated and it will be the role of the Joint Committee to make any allocations and undertake the monitoring of those monies. At the first meeting of the Joint Committee, members will be required to agree a prioritisation</p>

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			methodology against which all projects on the agreed infrastructure list will be tested. At this moment in time there is no commitment against any infrastructure ask on the infrastructure list and this will be a decision for the Joint Committee later this year.
6. Draft Development Consent Order (DCO)			
6.0 Articles			
Q6.0.2	IPs other than the Applicant and specifically statutory undertakers / utility providers and local authorities	<p>Schedule 1 Authorised Development</p> <p>Under Schedule 1 Authorised Development there is no distinction between the works constituting a nationally significant infrastructure project (NSIP) and those which are associated development within the meaning of (s) 115(2) of PA2008. Following the receipt of the Applicant's explanation for this at Deadline 1 following ISH2 into the dDCO. Do the Joint Councils, SUs and IPs agree with the approach taken and that the list of additions (a) to (l) is reasonable, precise and appropriate in all other respects.</p>	<p>Section 115 of the Planning Act 2008 provides that, in addition to the development for which development consent is required under Part 3 of the Act ("the principal development"), consent may also be granted for associated development or related housing development (that located next to or close to the development).</p> <p>The purpose of the Planning Act 2008 Guidance on associated development applications for major infrastructure projects ("the Guidance") is to set out the principles upon which the Secretary of State (and not the applicant) will decide on a case-by-case basis whether or not proposed development should be treated as associated development, (paragraph 5 of the Guidance). The Guidance is clear that the Inspectorate in making their decision should turn their mind to the consideration in paragraph 5 and require what they consider as sufficient information to be able to do so. The decision of the Inspectorate is on a case-by-case basis. If development is 'associated development' then the Inspectorate must be satisfied that the relevant assessments must be undertaken. Consequently, the Guidance should be followed by the Inspectorate.</p> <p>By way of an example, in the current case it is considered that <i>the County Highways Authority are better placed to explain the physical differences between the proposed accesses. The Local Planning Authorities have recently been sent a revised Land Use and Access Parameter Plan BM-M07 Rev E which will be subject to re-consultation with the County Highways Authority and National Highways week commencing 29th July 2024. The revised Parameter Plan at footnote 2 states that the Main Access is an approximate location which is subject to amendment by the Development Consent Order.</i></p> <p><i>It has been agreed between the Local Planning Authorities and the applicants that in the event the DCO is approved that the DCO works should take precedent over access drawings which do not take account of the DCO. The Local Planning Authorities are currently liaising with the applicants to agree appropriate planning conditions/planning obligations which would enable application 16/02000/OUT to either be implemented in accordance with the submitted access plans unless superseded by the implementation of similar accesses included as part of the M5 Junction 10 DCO works.</i></p> <p>It is therefore considered important for the Inspectorate to understand and consider the associated development within their decision-making process.</p>
Q6.0.4	The Applicant, Persimmon and Bloor Homes, Joint Councils, (i) Crown Estate (ii) only	<p>Article 7 – Planning Permission</p> <p>(i) In light of the overlap between the scheme boundary and the planning application for Elms Park referred to in the joint Bloor Homes and Persimmon Homes RR [RR-006] (16/0200/OUT) (para 1.6) would there be any conflict with the DCO as drafted?</p> <p>In responding, please explain with particular reference to timing as well as the physical differences proposed for access to the Elm Park Development.</p> <p>(ii) The Crown Estate [RR-038] refers to a planning permission at the Gallagher Retail Park, please provide details of this scheme explaining what land is included, and what conflict if any would arise between the DCO scheme and the planning permission.</p>	<p>The Joint Council's recognise that the drafting of Article 7 (1) is wording used in previous DCOs to provide clarification and reassurance that following the coming into force of an Order, any future planning permission granted under TCPA 1990 within its Order limits, which is not required for the use or operation of that DCO, will not breach the terms of its Order.</p> <p>However, the Joint Councils have concerns that the further drafting at Article 7 (2) & (3), which seeks to deal with the risk of inconsistency and incompatibility issues emerging from the <i>Hillside</i> case; seeks to constrain the planning enforcement powers of the Joint Council's LPAs, in them not being able to take planning enforcement action in the circumstances laid out in this Article. The Joint Council's consider that is not possible for a DCO Article to constrain the LPAs planning enforcement or decision-making powers in such a way, and its inclusion in a DCO is not vires. Therefore, the drafting of Article 7 (2) & (3) should be deleted.</p> <p>It also noted that the drafting within Article 7 is based on that proposed by the Promoter within the Lower Thames Crossing DCO, which has not yet been determined by the Secretary of State and therefore cannot be relied upon as a precedent.</p>
Q6.0.9	The Applicant, Joint Councils	Article 41 Defence to proceedings in respect of statutory nuisance	The (exception) included with the DCO drafting in relation to the defence to proceedings in respect of statutory nuisance, should be limited only to works associated the construction. It is unreasonable for the defence to apply to ongoing use and maintenance works. The

ExA ExQ1 ref	Question to:	Question	Joint Councils Response at Deadline 3
		<p>Are there controls on factors listed in 79 1 (d) (dust, steam, smell etc), (fb) (artificial light), (g) (noise from premises) and (ga) (noise from vehicles, machinery etc) of the Environmental Protection Act 1990 sufficient to justify the defence being provided against a statutory nuisance claim?</p>	<p>use and consequential works should not impose on the local community be planned, consulted in the local community and come within normal statutory works regarding road and associated measures. For amended drafting please refer below.</p> <p>Defence to proceedings in respect of statutory nuisance</p> <p>41.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(a) in relation to a nuisance falling within paragraph (d), (fb), (g) or (ga) of section 79(1) (statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—</p> <p>(a) the defendant shows that the nuisance—</p> <p>(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out construction of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(b); or</p> <p>(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided. or</p> <p>(iii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.</p> <p>(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.</p>
6.2 Schedule 2 – Requirements			
Q6.2.3	The Applicant	<p>Require 12. Surface water drainage</p> <p>(i) Is the word 'reflect' appropriate in delivering the mitigation measures in chapter 8, would not it better to 'accord with'?</p> <p>(ii) The EMP Requirement does not refer to drainage or flood compensation areas so how is the maintenance of these to be secured?</p> <p>(iii) Do the Councils and Environment Agency agree the requirement appropriately delivers mitigation?</p>	<p>(iii) The Joint Councils are satisfied that the proposed drainage as presented in Appendix 2.1 Drainage Strategy of the Environmental Statement provides the appropriate level of mitigation for attenuation of increased surface water runoff volumes and pollution control.</p>
8. Green Belt			
Q8.0.3	Joint Councils	<p>Green Belt</p> <p>(i) Can the Councils confirm whether they are satisfied that the elements of the Proposed Development that fall within the Green Belt fall within either paragraph 155 b) or c)</p> <p>(ii) If the ExA was to conclude that openness would not be preserved, are you satisfied with the case of very special circumstances provided by the Applicant in [REP1-046].</p>	<p>(i) The Joint Councils have expressed their satisfaction that the Proposed Development is consistent with the descriptions provided in paragraphs 155 b) and c).</p> <p>(ii) The Joint Councils are satisfied by the case of very special circumstances put forward by the Applicant, in that there is an identifiable policy need for the proposals.</p>

ExA ExQ1 ref	Question to:	Question	Joint Councils Response at Deadline 3
9. Heritage			
Q9.0.1	Joint Councils	<p>Archaeology</p> <p>In light of the advice in the NPSNN and the NPPF are the Councils now content that the submission [AS-038] the Archaeological Management Plan (AMP) provides sufficient detail at this stage to give the necessary reassurance that any below ground heritage assets will be safeguarded appropriately.</p>	The AMP is currently awaiting information from geophysical survey and trial trenching once this information is received the AMP can be updated. However, as it stands it does not contain sufficient information to necessary to mitigate archaeological deposits within areas that have not seen evaluation to date.
Q9.0.3	Joint Councils	<p>Archaeological Management Plan</p> <p>The AMP specifies at paragraph B.8.6.6 "All works will be monitored by the Archaeological Consultant and the LPA Archaeological advisor." (Our emphasis)</p> <p>Can the Councils confirm that this is agreed and there is the necessary capacity to undertake this work, or provisions are secured to provide the capacity?</p>	Once the outstanding information has been received the AMP can be updated and further works agreed with the appropriate Joint Councils' members. However, it is understood that the GCC Archaeologist is about to retire, the replacement post is being advertised.
Q9.0.4	Joint Councils, Historic England	<p>Archaeological Management Plan</p> <p>At paragraph B.8.10.2 states "<i>The LPA Archaeological advisor and, where appropriate, Historic England, will review and approve as aligned to and limited by the DCO requirements ...</i>" (Our emphasis)</p> <p>Do the Councils and or Historic England consider that the Requirements and the AMP provide the appropriate approach to signing off on heritage matters?</p>	As the AMP is currently based on incomplete data such an assurance cannot be reached until the AMP is updated.
Q9.0.5	Joint Councils, Historic England	<p>Archaeological Management Plan</p> <p>In the Register of Environmental Actions and Commitments (REAC) CH1 indicates that the intention is to "<i>achieve preservation by record</i>" Is this considered to be the appropriate approach and in line with best practice?</p>	Yes, this is the desired approach undertaken as part of archaeological work detailed within the AMP. However, the AMP is awaiting new information that may impact this assumption.
15. Traffic and Transport			
Q15.0.1	National Highways Gloucestershire County Council (Highway Authority) Joint Councils	<p>Traffic Management Plan (TMP)</p> <p>(i) Do the Councils and National Highways consider the wording of the TMP [AS-041] is sufficiently precise to ensure the plan would be effective?</p> <p>(ii) Should there be a requirement for the TMP to be consulted upon, and or approved by the relevant highway authority?</p>	<p>(ii) The Joint Councils and GCC (as Highway Authority) have reviewed the 1st iteration of the TMP, and in its current form, it does not contain sufficient detail to be effective, there is a lot of detailed information that will need to be provided by the Applicant in the 2nd iteration to ensure its effectiveness as a TMP. For example there is no specific detail on the following:</p> <ul style="list-style-type: none"> • Description of the works • Proposed speed restrictions • What traffic management phasing will be required including estimated durations and anticipated carriageway and slip road closures • No detail on the Bank Holiday and TM embargoes are required, including the Cheltenham Festival in March • Lack of diversion route drawings for specific closures • Information about network occupancy requirements for GCC or National Highways <ul style="list-style-type: none"> ○ Including co-ordination of network availability for other parties • Key customers and stakeholders effected by the scheme

ExA ExQ1 ref	Question to:	Question	Joint Councils Response at Deadline 3
			<p>This missing detail has been highlighted and discussed with the Applicant who have responded by stating that much more detailed information will be included in the 2nd iteration of the TMP, once the construction programme has been determined. The Joint Councils have been informed that the 2nd iteration of the TMP will not be available during Examination, however we are happy with this approach and will continue to work with the Applicant and their ECI Contractor post Examination to further develop the TMP to a suitably acceptable state to enable it to work prior to construction and implementation.</p> <p>The Joint Councils would request that they be consulted for all further iterations of the TMP as it develops beyond Examination. They would also require that they be a signatory for the TMP.</p>
Q15.0.3	The Applicant Gloucestershire County Council (Highway Authority)	<p>Modelling of Construction Traffic</p> <p>The TA at Section 10.4.3 states that the modelling is a 'reasonable worst-case scenario where traffic has free choice over routes'.</p> <p>(i) Please can the Applicant confirm how this represents a worst-case scenario if it results in a lower quantum of traffic on the sign posted route?</p> <p>(ii) Please can the Applicant provide evidence which supports this approach and the position that a large number of road users would not use the sign posted route?</p> <p>(iii) Please can the Local Highway Authority also provide a response with respect to the above matters?</p>	<p>(iii) Gloucestershire County Council (Highway Authority) are happy that the approach taken is acceptable, subject to the detailed response provided in relation to 15.0.1 and therefore will be managed accordingly. It is accepted that both re-routing and demand will fundamentally change route choice during this time. There will be many and various stages to the construction, and it will be necessary to continually monitor and review the network during this period. This will need to be done in collaboration with all parties as per the response to 15.0.1.</p>
Q15.0.9	The Applicant, National Highways and Joint Councils	<p>Transport Modelling</p> <p>Given the current differing positions with respect to the adequacy of the transport modelling, please can the Applicant, the Joint Councils and National Highways provide their view on the suitability of the modelling to:</p> <ul style="list-style-type: none"> - support scheme development and the need case, - inform other areas of the ES (AQ, Noise etc), - support the case for CA, - assist the ExA in its reporting to the SoS? 	<p>The Joint Councils fully support the scheme subject to further information on the relationship between mode choice and the junction assessment, as per ongoing discussions related to the Transport Assessment. The 'need' is clear when presented with the development master plans and mode choices available. The Joint Councils have requested an additional chapter within the ES to pull together all the relevant information in a coherent and logical way which would inform all other elements of the ES, CA and assist the ExA in reporting to the SoS. The Joint Councils continue to review the additional supplementary information being provided by the applicant for the Transport Assessment.</p>

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